



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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January 26, 1998

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Magalie R. Salas, Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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JAN 27 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 96-45
Public Notice DA 98-2

Dear Ms. Salas:

The Pennsylvania Public Utility Commission (PaPUC) hereby submits this Consolidated Comment on behalf of the PaPUC. The PaPUC appreciates this opportunity to comment on matters of particular concern to Pennsylvania and America in general.

Joseph K. Witmer, Assistant Counsel

Frank W. Wilmarth, Deputy Counsel
John F. Povilaitis, Chief Counsel

FOR:

The Pennsylvania Public Utility
Commission
P.O. Box 3265
Harrisburg, PA 17105-3256

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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JAN 27 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	CC Docket No. 96-45
)	[DA 98-2]
Federal-State Joint Board on)	
Universal Service)	(Report to Congress)
)	

SEPARATE COMMENT OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
FOR THE REPORT TO CONGRESS ON UNIVERSAL SERVICE

Pursuant to Sections 1.49, 1.415, and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. §§ 1.49, 1.415, and 1.419 (1997), the Pennsylvania Public Utility Commission (PaPUC) submits these comments. The PaPUC respectfully submits these comments to address the FCC Common Carrier Bureau's January 5, 1998 Public Notice DA 98-2 titled "*Common Carrier Bureau Seeks Comment for Report to Congress on Universal Service Under the Telecommunications Act of 1996*" and released in the above-captioned proceeding.

The Common Carrier Bureau ("CCB" or "Bureau") notice requests comment on five specific issues in connection with the Report to Congress on Universal Service required in

Congress' 1998 appropriations legislation. The CCB report will provide Congress with a detailed description of the extent to which the FCC's interpretations in specifically designated areas are consistent with the language of the Telecommunications Act of 1996 (TA-96).¹

The five areas addressed by the CCB notice are a result of the 1998 appropriations legislation which specifically requires the FCC to review its implementation of the Act's universal service provisions and "provide a detailed description of the extent to which the Commission's interpretations in the following areas are consistent with the plain language" of the Act. The five focus areas identified by the FCC Notice are (1) definitions, (2) application of those definitions, (3) contributors, (4) recipients of support, and (5) percentage of support provided by the federal mechanism. All five areas set for comment focus on the FCC interpretations of the universal service provisions found in § 254 of the new legislation. The PaPUC submits these comments in recognition of the fact that virtually every issue raised in this CC Docket 96-45 proceeding has a significant impact on intrastate operations and local rates of carriers subject to the PaPUC's jurisdiction.²

¹Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151 *et. seq.*) ("1996 Act" or "Act").

²The PaPUC shares the concern of the National Association of Regulatory Utility Commissioners (NARUC) that the issue of diverting federal universal service funds to reduce interstate access charges was not even presented to the Joint Board.

Summary of Comments

The PaPUC generally supports the NARUC comments. The PaPUC is also concerned about recent actions by the Commission pertaining to Pennsylvania that could have the unintended effect of narrowing the broad definitions and goals intended by the Congress in the TA-96. The FCC's approach will result in narrow policies that contravene the plain meaning of the TA-96.

The PaPUC is concerned about the FCC's recent refusal to release the area codes Pennsylvania needs to implement transparent overlays. Transparent overlays prevent number hoarding and reduce the large economic costs of burdensome and unnecessary area code splits.

The PaPUC is concerned that this refusal to release the area codes needed for transparent overlays erodes the focus on local state solutions to local problems set forth in the TA-96. The PaPUC Order of July 15, 1997 was premised on a solution in accordance with the FCC's own numbering guidelines. However, the FCC's recent refusal appears to rely on the contradictory claims of wireless carriers that, collectively, frustrate the development of local solutions to area code problems envisioned by the TA-96.

The PaPUC questions the efficacy of relying on the comments of the wireless carriers when those very comments contradict recent wireless carrier actions. These wireless carriers, which represent but one segment of the telecommunications industry and are beyond the PaPUC's jurisdiction, have made claims to the FCC that the code sharing and allocation of numbers in 1,000 blocks, commonly associated transparent overlays, cannot be implemented in a reasonable time frame in the 215, 610, and 717 area codes. However, recent actions by major wireless carriers contradict such claims.³

The PaPUC believes that this issue concerns universal service in several respects. First, other carriers and the general public in Pennsylvania are being forced to endure burdensome and unnecessary delays because the FCC has not released the area codes needed to implement transparent overlays. The wireless carriers' persistent and contradictory attempt to prevent transparent overlays have resulted in other hardship and economic burdens on the general public.

Moreover, the wireless carriers are attempting to sustain their efforts at imposing the burdensome costs for unnecessary area codes by claiming that no solution, other than area code splits, can remedy Pennsylvania's situation. However, these same carriers, who claim that code sharing and allocation of numbers in blocks of less than 1,000 is impossible, are right now engaged in those very actions.

³One wireless carrier, Nextel, recently indicated that it is capable of code sharing and can secure numbers in blocks of 1,000 -- despite prior claims to the FCC that such action was impossible. See Appendix A.

In addition, the wireless carriers have advanced these claims knowing full well that the burdensome economic costs will fall, in particular, on small to mid-size businesses in the areas served by the 215, 610, and 717 area codes in Pennsylvania. If the wireless carriers succeed in convincing the FCC to not release the area codes Pennsylvania needs to provide transparent overlays, the general public will be forced to experience more burdensome and economic harm solely to benefit wireless carriers. The PaPUC wants to avoid any unnecessary costs and burdens in providing the telecommunications service envisioned by the universal service provisions of the TA-96.

CCB Issue 1: Definitions.

Pennsylvania Issue: Transparent Overlays. The PaPUC views the transparent overlays, which it seeks to implement in Pennsylvania through the area codes that the Commission has not yet released, as an interim measure that helps attain the “dialing parity” as established in the House Bill and enshrined in the TA-96. Moreover, the transparent overlays also facilitate the “number portability” as defined in the Senate Bill and enshrined in the TA-96. The PaPUC believes that the Commission’s heretofore refusal to release the area codes needed for transparent overlays in Pennsylvania is contrary to these definition and do not result I the delivery of services in a cost-effective manner.

CCB Issue 2: Application of The Definitions to Mixed or Hybrid Services.

Pennsylvania Issue: Transparent Overlays. The PaPUC believes that the continued refusal to release the area codes needed for transparent overlays will result in increased costs, with detrimental impacts to universal service, in all areas of Pennsylvania that will be needlessly subjected to area code splits. The end result of unnecessary area code splits, if the area codes needed to provide transparent overlays is denied, will be burdensome economic costs for the general public in Pennsylvania. to secure the basic and advanced telecommunications, as set forth in Section 254 of the TA-96, for schools, libraries, and health care providers. Moreover, the PaPUC notes that every area currently slated for a transparent overlay is served by one, if not a multitude, of rural telephone companies as defined by the TA-96.

CCB Issue 3: Required Contributors to Universal Service. The PaPUC urges the Commission to continue with its efforts to ensure that all telecommunications carriers, especially the CMS providers, contribute to the Universal Service goals set forth in Section 254 of the TA-96. The PaPUC believes the Commission's attempts to secure contributions from all carriers serving the general public is a laudable and consistent with the intent of the TA-96.

CCB Issue 4: Eligible Recipients of Universal Service. The PaPUC generally supports the NARUC's comments on this issue. Notwithstanding the recalcitrance of the wireless carriers regarding transparent overlays, the PaPUC reiterates its position that wireless carriers, cable companies, and other service providers should be considered eligible recipients under Sections 706 and 254(h) of the TA-96.

Conclusion

For these reasons, the PaPUC requests that the Commission set forth Pennsylvania's position on Transparent Overlays and the FCC's actions regarding the release of the necessary area codes in the Report to Congress to the extent these concerns remain unresolved. The PaPUC thanks the Commission, and the CCB in particular, for providing Pennsylvania with this welcome opportunity to raise its concerns to the extent they impact Pennsylvania and the nation.

Respectfully submitted,

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FOR:

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Nextel Communications, Inc.

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January 16, 1998

Chairman John M. Quain
Vice-Chairman Robert K. Bloom
Commissioner John Hanger
Commissioner David W. Rolka
Commissioner Nora Mead Brownell
The Pennsylvania Public Utility Commission
North Office Building
North Street and Commonwealth Avenue
Harrisburg, Pennsylvania 17120

Re: Nextel's Emergency Request for NXX Assignments in the 215 and 610 NPAs in Pennsylvania

Dear Chairman Quain, Vice-Chairman Bloom and Commissioners:

The purpose of this letter is to inform you of the severe impact the Pennsylvania Public Utility Commission's (PA PUC) continuing rationing and lottery of new NXX assignments in the 215 and 610 area codes ("NPAs") is having on the ability of Nextel Communications, Inc.'s ("Nextel") to provide competitive wireless services in the Greater Philadelphia area.

By way of background, Nextel offers a unique combination of two-way "cellular" mobile service, text messaging, alphanumeric paging and individual and fleet dispatch services ("Direct Connect") using a single integrated handset. Direct Connect enables subscribers to reach one, two or even all of their co-workers instantly and talk for a fraction of the cost of cellular service. Nextel serves more than 1.2 million subscribers in over 400 cities across the United States on its all-digital near-nationwide network. The network enables subscribers to make and receive calls wherever Nextel has service without any special registration requirements or roaming charges at their local market rates.

Beginning in the fourth quarter of 1997, Nextel has achieved rapid subscriber growth in the Philadelphia area. Nextel is activating customer units in the 215 NPA at a rate of approximately 3,000 per month; in the 610 NPA, customer activations are running at 2,000 per month and increasing. To meet this demand, Nextel has

Chairman John M. Quain
The Pennsylvania Public Utilities Commission
January 16, 1998
Page -2-

assigned its customers all of the telephone numbers in its NXXs in the 610 NPA (exhausted in November 1997) and the 215 NPA (exhaust in December 1997). Nextel has only one activated NXX (and therefore one rate center) in the 610 NPA (610-633); we have no other 610 NXXs or rate centers from which to "borrow" numbers to assign customers. As to the 215 NPA, Nextel has two NXXs, 215-416 and 215-852. We have no other NXXs or rate centers in the 215 NPA from which to obtain numbers to serve customers.

Nextel applied to the Code Administrator for an additional 610-NXX on September 8, 1997; under the PA PUC's July 28, 1997 rationing order, it has been granted 610-496 effective on February 11, 1998. Thus from mid-November until mid-February, Nextel does not have any 610 numbers. Nextel applied for an additional 610 code on November 7, 1997; under the PA PUC's rationing lottery, that request is expected to be filled in mid-July 1998. Given current subscriber growth Nextel is likely to again run out of 610 numbers before it receives relief.

The situation in the 215 NPA is even more critical. Nextel's October 6, 1997 application is expected to be filled in mid-April 1998 -- a four month period without any 215 numbers. Nextel filed a second 215 application on November 7, 1997 and an unspecified code is expected to be assigned in mid-July. Again, under the PA PUC's rationing plan at current subscriber growth rates, Nextel will be out of numbers before it receives new assignments.

Nextel has invested tens of millions of dollars in wireless infrastructure in the Philadelphia area; for the PA PUC's NXX rationing plan to force Nextel to suspend new subscriber activations is unacceptable in a competitive market environment. Accordingly, Nextel is engaging in costly and cumbersome alternative arrangements to be able to continue marketing its service in Philadelphia. For example, we are assigning Philadelphia customers numbers from NXXs in the 609 area code in New Jersey and the 302 NPA in Delaware. This results in calls to our subscribers from their Philadelphia area homes and businesses becoming toll calls. To compete, Nextel has been forced to reimburse these toll charges for its customers. This severely diminishes Nextel's competitiveness as against other wireless carriers able to assign local NXXs to their customers.

Nextel has also "purchased" 1,000 number blocks from NXXs in the 215 and 610 NPAs from a competitive local exchange carrier ("CLEC"). Beginning December 31, 1997, Nextel is paying the CLEC to assign 1,000 number ranges from the CLEC's 215 and 610 NXXs to Nextel. This is expensive as Nextel incurs costs for T1 facilities

Chairman John M. Quain
The Pennsylvania Public Utilities Commission
January 16, 1998
Page -3-

and trunks to the CLEC as well as the CLEC's charges. Additionally, customers assigned these numbers experience degraded access to special Nextel network features for retrieving voice mail and sending pages and alphanumeric messages.

Nextel is, of course, also recycling numbers from deactivated subscribers as quickly as possible. The only way Nextel can continue marketing service in Philadelphia, however, albeit with compromised competitiveness, is by the extraordinary steps described above. We have communicated the urgency of this situation to the PA PUC in both formal proceedings and staff discussions; for example, the second sentence of Nextel's July 30, 1997 Motion for Reconsideration stated that the PA PUC's July 15 Order denying area code relief "will threaten Nextel's ability to sell new phones in 1998 in the 610, 215 and 717 area codes. To date, however, we have received no indication that the PA PUC is willing to modify its Order or rationing plan. On the contrary, the plan was extended indefinitely in November 1997.

The PA PUC's rationing plan unreasonably discriminates against Nextel by denying it the essential numbering resources necessary to compete in the Philadelphia market. This is why Nextel has asked the Federal Communications Commission to direct that Nextel be immediately assigned additional 215 and 610 NXXs.

Nextel appreciates your attention to this letter. If you have any questions or would like additional information, please contact either myself or Lawrence Krevor at (202) 296-8111.

Sincerely,



Robert S. Foosaner
Vice President and Chief
Regulatory Officer

cc: Lee Morrison, Ass't Counsel, PA PUC
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Chairman John M. Quain
The Pennsylvania Public Utilities Commission
January 16, 1998
Page -4-

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